

SECTION FOUR

Minimizing Liability

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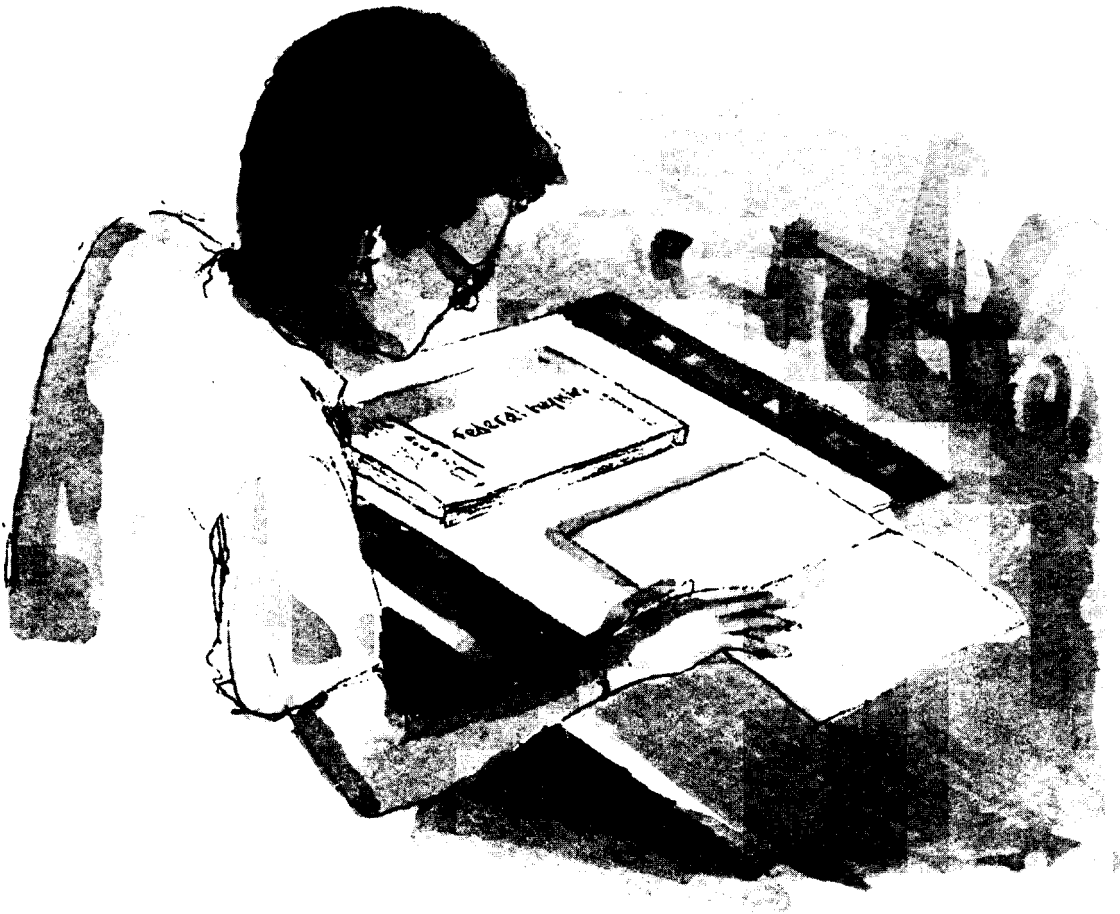
Communities can be liable for an injury to a collection day worker, an accidental release of HHW to the environment at the site, or an accident during the transportation of HHW from the collection site to the disposal site. The following recommendations can help communities minimize potential liability.

Become Familiar With National, State, and Local Hazardous Waste Regulations

Planners of community HHW programs must know the laws that govern their collection activities. Planners also should be aware that their state might have

requirements that are more stringent than those set by the federal government.

In addition, program planners should be familiar with regulations governing management of specific wastes. For example, consolidated oil-based paint must be tested for polychlorinated biphenyls (PCBs) before it is sent to a supplemental fuel-burning facility. Paint that contains more than 50 parts per million of PCBs must be sent to an incinerator permitted to burn PCBs under the



Toxic Substance Control Act. Latex paint usual] y is not considered a hazardous waste. Several states recommend treating it as a hazardous waste, however, because of the levels of heavy metals found in some brands and formulations.

While hazardous waste regulations might seem complex at first, program planners should remember that there is potential liability associated with taking no action at all to manage HHW. By complying with the requirements set out in federal, state, and local laws, communities can reduce their overall liability. Appendix A summarizes the federal requirements that apply to HHW programs.

Develop a Safety Plan

Well in advance of collection day, the sponsor (or contractor) should develop a safety, accident prevention, and contingency plan. Hazardous waste management firms experienced in servicing HHW collections can provide a sample plan. The plan should include steps for preventing spills, a contingency plan in the event of a spill or accident and a list of the health and safety equipment available on site. The plan also should specify when an evacuation would be necessary, the evacuation routes and methods, and who would be in charge of an evacuation. For example, primary emergency authority should be designated to a specific police and fire department if more than one department has jurisdiction. Police and fire departments should be involved in the planning and provided with the layout of the collection site, information about the wastes that will be handled, and possible evacuation routes.

A copy of the safety plan should be available at the collection program. One person should be designated to control any emergency operation.

Make Training and Public Education a High Priority

Proper training of the sponsor's in-house staff and volunteers is essential for minimizing potential problems on collection day. Section 8 discusses training requirements in greater detail. Public education and publicity also can help ensure a safe operation. Publicity should inform participants about how to safely package their HHW and transport it to the collection site. For example, participants should be instructed not to transport HHW within the passenger compartments of their vehicles.

Obtain the Necessary Insurance

The sponsor should ensure that the program has adequate insurance to cover general, employee, transportation, and environmental liability. Some communities will choose to self-insure for any HHW collection liability, especially when a contractor has most of the responsibility. The minimum insurance required includes:

- **General Liability Insurance.** Contractors managing all collection site operations and activities usually provide \$1 million to \$2 million of general liability insurance for damage to property or for bodily harm at the collection site caused by actions of the contractor's staff. This coverage does not apply to property damage or bodily harm caused by the sponsor's staff or volunteers.
- **Motor Vehicle Insurance** The contractor needs insurance to cover all drivers and vehicles transporting the collected waste.
- **In-Transit Insurance.** In-transit insurance is required by the Department of Transportation for interstate movement

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of hazardous materials or waste. The contractor's coverage, up to \$5 million, will vary according to the types of materials transported. This insurance covers environmental restoration of property or compensation for bodily harm.

■ **Indemnification Clause.** The contract with the hazardous waste firm should include an indemnification clause stating that the sponsor is blameless in the event of contractor negligence, acts of omission or wrongdoing. Similarly, the contractor can request indemnification by the sponsor for any costs incurred by the sponsor's negligence.

■ **Workers' Compensation Insurance**

The sponsor should obtain coverage for any staff or volunteers working at the collection day who are not provided by the contractor.

The sponsor also can require additional protection from the contractor to help minimize liability, including:

- A "bid bond" to cover the sponsor for time and expenses for the bid period in the event that a contractor turns down the contract after it is awarded.
- A "performance bond" to ensure satisfactory performance and, if necessary, cover the costs of completing the project according to the contract.
- A "certificate of insurance" from the contractor's insurance company, and a clause in the contract requiring that the sponsor be given notice in the event of cancellation of the contractor's policy.

In addition, the sponsor should ask to see a copy of the TSDF's environmental impairment liability insurance. These facilities need this insurance to cover liability under the Resource Conservation and Recovery Act (RCRA), the federal law covering hazardous waste management. The insurance is not available to HHW collection programs.